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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Executive Registry
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28 APR 1976

Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for our comments on H.R. 169 and H.R. 12039, bills "To amend the Privacy Act of 1974."

Subsection (2) of H.R. 12039 would require agencies to inform "each person" who was the subject of any warrantless or non-consensual mail intercept, electronic surveillance or surreptitious entry, or who was the subject of a file or named in an index in connection with the so-called CHAOS, COINTELPRO, or "Special Service Staff" programs. Such notice would provide persons contacted with a statement of their right to access under the Freedom of Information Act and of their right to request amendment of records under the Privacy Act. It would also provide them with the option of requiring destruction of the records.

Before discussing the practical and privacy implications of the procedures proposed in H.R. 12039, an important problem of construction must be addressed. The Privacy Act in general applies to "individuals," defined in 5 U.S.C. 552(a)(2) as citizens of the United States or permanent resident aliens. However, H.R. 12039 would require notification of "persons." It is unclear whether the persons referenced in the bill refer to all persons commonly subsumed under that term or only the class of individuals presently covered by the Privacy Act. If the more inclusive construction is intended, the bill would require notification of subjects of necessary foreign intelligence interest who are not United States citizens, permanent resident aliens or other persons recognized as domestic entities. Such a requirement would, of course, seriously inhibit the purpose of foreign intelligence gathering activities.

An Agency-initiated notification program of the individuals contemplated in H.R. 12039 would be unworkable. Because the CHAOS program was not designed to identify individuals, but rather to examine the possibility of foreign connections with certain kinds of activity, most of the information

collected or maintained under the program is not complete enough to sufficiently identify or locate the individuals concerned. The program resulted in the accumulation of many names of individuals connected with such activities without further identifying information. A name alone, even a full name, or a name coupled with a reference to an organization or another person, does not identify the subject with sufficient clarity to assure proper identification. Also, in many cases, names are incomplete or are not coupled even with past addresses. Even where the subject can be fully identified, there is a high statistical probability that he has changed his address in the intervening years. This identification problem exists to even greater degree in the case of mail interceptions. To identify the individuals involved with any degree of certainty would require this Agency to undertake a large-scale domestic inquiry. Such an effort would necessarily require collecting additional information on individuals. This would of course defeat the purpose of this legislation and violate the recently issued Executive Order 11905.

These practical difficulties have serious privacy implications for the individuals concerned. An attempt to notify subjects based on information now available in Agency files would result in a great deal of misdirected mail circulating through the postal system. In addition, it is likely that many individuals may be incorrectly identified and thus be notified of the existence of information which was in fact related to another person. Indeed we have already confronted this problem even under existing procedures where we are able to solicit further identifying data from persons requesting information under the Privacy Act.

It would appear unnecessary to institute the notification procedures proposed in H.R. 12039 in order to inform individuals whether the Government maintains the specified records pertaining to them. The Privacy Act and the Freedom of Information Act already make adequate provision for individuals to ascertain the existence of such information. This Agency has stated on several occasions that any individual or organization seeking to determine whether the Agency holds information pertaining to them may contact the Agency, and such information, as is available pursuant to the Freedom of Information and Privacy Acts, will be released. Over 9,000 people have done so already, and this system is proving an adequate method for interested persons to exercise their rights under the Acts. The volume of requests is a solid indication that the public is aware of the access specified by the Acts.

An important and desirable aspect of existing procedures is that by responding to requests, the Agency is able to determine the current address of the individual and in those cases where it is difficult to match existing information with a particular requester, the Agency has the opportunity

to request the additional identifying information necessary to ascertain whether information the Agency has pertains in fact to such individual. This mitigates the dual problem of accurate identification and proper notification which would be inherent in the procedures proposed in H.R. 12039.

Subsection (2) of H.R. 12039 would require that the person notified be provided "the option" of requiring the Agency to destroy information improperly maintained or of requesting amendment and correction of the information. The Central Intelligence Agency has stated its intention to destroy such material, including all the information which was improperly collected or maintained under the so-called CHAOS program, when the present moratorium is lifted. Such destruction will, of course, be consistent with applicable law and Presidential directives. In addition, the Agency is in the process of reviewing all records systems to insure the information is properly held and that it is accurate, relevant, and timely. This Agency has requested the Privacy Commission to review Agency records systems to assure that they are consistent with the requirements of the Privacy Act. Accordingly, it would serve no purpose to encourage the up-dating, supplementing, or correcting of information which is bound for destruction.

In sum, an Agency-initiated notification program, such as that proposed in H.R. 12039, would be impractical as well as unnecessary. Impractical, because it would be impossible to accurately identify or to properly notify a high proportion of the individuals involved. Unnecessary, because interested individuals can already be informed under existing law and can be assured that improper records will be destroyed.

In addition, both H.R. 169 and H.R. 12039 would alter section 3(d)(2)(B)(i) of the Privacy Act, regarding an individual's right to correct personal information held by Government agencies. This Agency would have no objection to this proposed alteration.

Finally, both H.R. 169 and H.R. 12039 would strike section 3(j)(1). This section authorizes the Director of Central Intelligence to promulgate rules exempting any system of CIA records from certain requirements of the Act.

In drafting the Privacy Act, Congress recognized that "certain areas of Federal records are of such a highly sensitive nature that they must be exempted" (House Report 93-1416). Accordingly, Congress exempted systems of records "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" [subsection (k)(1), and Central Intelligence Agency records [subsection (j)(1)] from portions of the Act. Sections of the Act which do apply to this Agency restrict the dissemination of records to those for specific enumerated purposes, require it to maintain a listing of each disclosure of a record for at least five years, and publish annually in the Federal Register a general description of our systems of records concerning American citizens or permanent resident aliens.

The basic mission of this Agency is to provide our nation's policy-makers with the best possible intelligence on foreign developments and threats. The system of records established in the Agency is designed to support this mission. Our ability to provide accurate and current intelligence to the President, the National Security Council, and to the Congress depends heavily upon the acquisition and maintenance of productive sources and effective methods of collection and analysis. Preservation of these sources and methods is absolutely dependent on their secrecy. Technical collection efforts can often be easily nullified if the target country is aware of the collection effort. And, of course, human sources will refuse further cooperation if they believe there is a substantial danger that their cooperation will be revealed. I believe it was because of this essential secrecy that Congress, in the National Security Act of 1947, as amended (50 U.S.C. 403) directed that:

> "The Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

Although certain CIA information can be protected by the section (k)(1) exemption for national defense or foreign policy information, this exemption would not fully protect Intelligence Sources and Methods information contained in the Agency's system of records. An intelligence document can reveal sources and methods and warrant protection even though the substantive information conveyed does not jeopardize the national defense or foreign policy.

In sum, H.R. 169 and H.R. 12039, by striking the Agency's exemption from certain requirements of the Privacy Act, would jeopardize the Intelligence Sources and Methods which are vital to the Agency's ability to fulfill its unique mission. The Agency, by its regulations, is meeting the spirit of the Act and is responding to all requests from individuals for information pertaining to them. For the foregoing reasons, I oppose H.R. 169 and H.R. 12039.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

/s/ George

George Bush
Director

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